



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/07445/2019

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 3<sup>rd</sup> March 2020**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> March 2020**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**MR S.R.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Howard, Fountain Solicitors

For the Respondent: Mrs Aboni, Senior Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

## **DECISION AND REASONS**

1. The Appellant is a national of Sri Lanka, date of birth 18<sup>th</sup> September 1954. He arrived in the UK on 11<sup>th</sup> September 2012 and claimed asylum on this date. The claim was refused by the Respondent for the reasons set out in a decision dated 30<sup>th</sup> January 2013. An appeal against that decision was dismissed by First-tier Tribunal Judge McAll, for the reasons set out in a decision promulgated on 15<sup>th</sup> March 2013. Adverse credibility findings were made by Judge McAll. In particular he made the following findings:
  - i. the Appellant had not been arrested and detained in Sri Lanka as claimed;
  - ii. the Appellant was not suspected of assisting the LTTE as claimed; and
  - iii. the Appellant did not leave Sri Lanka illegally as claimed

Drawing these strands together the judge found the Appellant was not at any real risk of serious ill-treatment upon his return to Sri Lanka. By 17<sup>th</sup> May 2013 the Appellant was appeal rights exhausted.

2. In August 2013, February 2016 and April 2017 the Appellant made further submissions to the Respondent. These applications were refused. On 20<sup>th</sup> December 2018 the Appellant lodged further submissions and it is these submissions which form the basis of the matter before me. The Appellant maintained that he feared to return to Sri Lanka on account of his previous connections to the LTTE, and in support of his claim produced further documentary evidence which had not been before the original Tribunal. The further documentary evidence consisted of a medical diagnosis ticket, letter from the Red Cross dated 2009, and a letter from a cousin stating that the Authorities in Sri Lanka were interested in knowing the whereabouts of the Appellant.
3. The Appellant also claimed, in his further submissions, that he had been involved in *sur place* political activities in the UK. In furtherance of this claim the Appellant submitted a witness statement saying he had previously engaged in voluntary work for the TGTE. In a decision dated 16<sup>th</sup> July 2019, the Respondent accepted that the Appellant was a “low level helper” of the TGTE whose activities included local community work. The Appellant also submitted some photographs which, he claimed, showed his attendance at a demonstration on behalf of the TGTE. Nonetheless, the Respondent concluded that there is no evidence that the Sri Lankan authorities are aware of the Appellant’s *sur place* activities. Thus the Respondent concluded that the Appellant would not be at risk upon return, and the application was refused.

### **The First-tier Tribunal**

4. The Appellant appealed the refusal and the matter came before First-tier Tribunal Judge Lodge. In a decision promulgated on 17<sup>th</sup> October 2019, the FtTJ dismissed the appeal. He heard evidence from the Appellant and

had before him the documentary evidence that formed the basis of the further submissions. The FtTJ took as his starting point the previous decision made by Judge McAll. He made findings that the further evidence produced by the Appellant was not reliable and did not assist his claim that he had left Sri Lanka because of his involvement with the LTTE.

5. The FtTJ further found that as the documentary evidence was not reliable, it did not impact upon the findings made by Judge McAll. He also discounted the evidence put forward by the Appellant regarding his TGTE membership as “an entirely self-serving project” [43].
6. The Appellant challenges the decision on a number of grounds which are best summarised by reference to First-tier Tribunal Judge Keane’s grant of permission to appeal dated 9<sup>th</sup> December 2019, as follows:

“The judge arguably failed to take into consideration evidence which might materially have borne on a resolution of the issue of the appellant’s credibility and accordingly on the outcome of the appeal. The judge accorded weight to the previous decision of a First-tier Tribunal Judge as the judge was bound to do. The judge then went on to consider further evidence submitted by the appellant at paragraphs 22 to 38 inclusive of the decision. The judge concluded that upon his return to Sri Lanka the appellant would not come to the adverse attention of the authorities. Before arriving at such a finding the judge did not consider background evidence of conditions prevailing in Sri Lanka to which the author of the grounds copiously referred. In fairness to the judge at paragraph 40 of the decision the judge did refer to background evidence when considering a specific submission made by Counsel for the appellant. However, by then the judge had already rejected the appellant’s core claims which concerned material which came into existence after the date of the first Tribunal Judge and the judge arguably should have taken into consideration the background evidence before arriving at a finding that the appellant had not given a credible account that at the date of the hearing before the judge the Sri Lankan authorities would entertain an adverse interest in him.”

7. Permission having been granted the matter comes before me to assess whether the decision discloses an error of law, and to re-make the decision or remit to the First-tier Tribunal for re-hearing if I find an error.

### **Error of Law Hearing**

8. At the hearing before me at the Tribunal, Mrs Aboni acknowledged that there was no Rule 24 response, but she was seeking to defend the decision of the First-tier Tribunal.
9. In his submissions Mr Howard sought to rely on the grounds of appeal as drafted. He handed up the most recent CPIN fact finding mission on Sri Lanka dated 20<sup>th</sup> January 2020. He said that he would rely in particular on 4.1.1 and 4.3 of that document.

10. The main thrust of his submissions centred on the FtTJ's credibility findings relating to the further evidence which had been submitted to the Tribunal. Mr Howard said that the FtTJ had discounted the further evidence as being not credible. In doing so the judge had dealt unfairly with the Appellant because it was clear that he had reached his credibility findings without first looking at the background evidence which had been submitted. The judge had therefore failed in his task of looking at the evidence in the round.
11. Mr Howard said, as the grant of permission pointed out, that there was a great deal of background evidence which had been submitted on the Appellant's behalf and it appeared that the judge had simply sidestepped that evidence. This had led the judge to make findings which were outwith a consideration of all of the evidence put forward in support of the Appellant's claim. This is the wrong approach.
12. Mr Howard then referred to the judge's findings at [43] which, he said was simply wrong. In view of the background material, the judge has failed to provide adequate reasons for concluding, as he did, that there are no grounds to find that the Appellant is likely to be stopped or questioned at the airport in Sri Lanka. That is contrary to the Respondent's own CPIN which agrees that failed asylum seekers are likely to be questioned at the airport. There are no findings made on the credibility or otherwise of the Appellant's membership of the TGTE and thus no consideration of whether the extent of his membership places him at risk on return. The decision was therefore unsustainable; it should be set aside and remade in the First-tier Tribunal.
13. In her submissions, Mrs Aboni said that the FtTJ had directed himself appropriately. He had referred to Judge McAll's decision as the starting point and had given consideration to the previous evidence which had been before that judge. The FtTJ had made findings which were adequately reasoned. Those findings showed that the further documentary evidence put forward on behalf of the Appellant could not be relied upon. It was open to the judge to find therefore that the Appellant had no significant role in the LTTE such as to bring him to the notice of the authorities on return. The decision was sustainable and should stand.

## **Discussion**

14. I find that I am persuaded that there is force in Mr Howard's submissions. I find that the judge has correctly used the previous decision as his starting point in his consideration of the credibility of the Appellant's claim. He sought to measure the further evidence that had been submitted against the findings made by Judge McAll in his decision. The difficulty is that he has performed that task incompletely.
15. FtTJ Lodge has clearly made reference to those aspects of the newly submitted evidence that were specific to the Appellant's circumstances e.g. the medical diagnosis ticket, vehicle registration document etc. [22-

38]. However I am unable to see that the FtTJ has brought into this equation a consideration of the background evidence of the conditions prevailing in Sri Lanka. This is evidence that was also submitted on the Appellant's behalf. It is vital that the specific evidence is considered in the context of the general. Therefore I cannot discount that, had a proper consideration of all the further evidence been undertaken, it may have led to different credibility findings being made.

16. I am reinforced in this view by the judge's findings at [43]. Having found against the Appellant so far as the further evidence that related to the period that predated his arrival in the UK is concerned, the judge appears thereafter to have lost focus with regard to risk on return. At [42] the judge says the following:

"Judge McAll previously found there were no grounds for suspecting that the Appellant was involved in LTTE activity or that he would be suspected of such activity. That was on the basis that he had no connection to the LTTE in Sri Lanka and had not left Sri Lanka illegally."

17. Further at [43], the judge makes a finding:

"I am satisfied there are no grounds to find that the appellant is likely to be stopped or questioned at the airport in Sri Lanka. In any event, I am satisfied that even if that was the case, given that the appellant had no connection with the LTTE in Sri Lanka, his membership of the TGTE is an entirely self-serving project, being undertaken simply to bolster his asylum claim."

18. It has always been the Appellant's claim that he is a member of the TGTE. Indeed at [43] the judge seems to accept that to be the case. It is the Respondent's case that the Appellant is a low level member and therefore not at risk of detection. The FtTJ seems to agree with that. However I find it is difficult to see the reasoning process which led him to the conclusion that he made, that is that the Appellant's membership of the TGTE is entirely self-serving. I find that there has been insufficient analysis of the evidence relating to this part of the Appellant's claim.
19. As Mr Howard pointed out, the Respondent's own CPIN note (referred to by the judge at [40]) sets out that returning failed asylum seekers would likely be questioned at the airport by immigration officials and may be passed to the criminal investigation department (CID) based at the airport. The Appellant's position needs to be fully considered even if it ultimately leads to a conclusion that his claim is self serving.
20. For the foregoing reasons therefore I find that the decision of the FtT cannot stand and it must be set aside and reheard. I did consider whether I was able to preserve any of the findings made by the FtTJ but on reflection I conclude it would be unsafe to do so. The matter will be remitted for a further hearing *de novo* before the First-tier Tribunal.

**Notice of Decision**

The decision of the First-tier Tribunal promulgated on 17<sup>th</sup> October 2019 is set aside for material error. The decision will be remitted to the First-tier Tribunal (not Judge Lodge) for that Tribunal to re-make the decision.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date 14 March 2020

Deputy Upper Tribunal Judge Roberts